

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SALVATORE SYLVESTER, ALICIA)
EDWARDS-GUTZMAN, and EUNICE HILL,)
on behalf of themselves, and all others)
similarly situated,)

Plaintiffs,)

v.)

Civil Action No. 20-1322

DEPOSITORS INSURANCE COMPANY,)
NATIONWIDE PROPERTY & CASUALTY)
INSURANCE COMPANY,)
and NATIONWIDE MUTUAL INSURANCE)
COMPANY)

Defendants.)

**DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT**

In compliance with the Court's practices and procedures, Defendants Depositors Insurance Company, Nationwide Property & Casualty Insurance Company, and Nationwide Mutual Insurance Company (collectively, "Nationwide Defendants") hereby move the Court for leave to file Defendants' Reply in Support of Motion to Dismiss Plaintiffs' Class Action Complaint (the "Reply") (attached as Exhibit A).¹ In support of this Motion, the Nationwide Defendants state:

1. On March 26, 2020, the Nationwide Defendants' moved to dismiss Plaintiffs' Class Action Complaint (ECF No. 10) on the following grounds: (a) without pleading the existence of any injury or actual controversy arising from the alleged nonpayment of title and regulatory fees ("Title and Regulatory Fees"), Plaintiffs lack standing to prosecute a claim for breach of contract

¹ Plaintiffs' counsel does not object to Defendants filing this Motion for Leave, per the Stipulation to Extend Time to Respond to Defendants' Motion to Dismiss filed April 28, 2020 (ECF 14).

or declaratory relief; (b) the express language of the Plaintiffs' policies ("Policies") do not require payment of Title and Regulatory Fees; and (c) Pennsylvania law does not require payment of Title and Regulatory Fees.

2. Plaintiffs filed their response in opposition to the Nationwide Defendants' Motion to Dismiss on May 14, 2020 (ECF No. 16.)

3. The Nationwide Defendants' Reply is necessary to rebut issues and points of law not previously addressed in its initial brief, to highlight deficiencies in Plaintiffs' arguments, and to distinguish authority raised in Plaintiffs' opposition brief. Here are examples:

- (a) *Subsequent to the filing* of the Nationwide Defendants' Motion to Dismiss, the Northern District of Ohio dismissed another putative class action against a different insurer with policy language similar to that in the Policies. *See Pieczonka v. Progressive Select Ins. Co.*, 1:19-cv-02965 (N.D. Ohio), Motion to Dismiss Order dated April 21, 2020 (attached to Reply as Ex. 1).
- (b) The Nationwide Defendants' Reply distinguishes the Pennsylvania cases, repeatedly referenced in Plaintiffs' opposition brief, that involve materially-different policy language, materially-different valuation contexts, and do not address key arguments raised in the Nationwide Defendants' Motion to Dismiss.
- (c) Plaintiffs also cite a series of cases from Florida that purportedly support their position, but Plaintiffs omit reference to a recent Florida decision where the court expressly held that title and registration fees were *not required* to be paid by the insurer. *See Schenck v. Windhaven Ins. Co.*, No. 16-2018-CA-000023 (Fla. 4th Cir. Ct.), Order on Motion to Dismiss dated May 17, 2019 (attached to Reply as Ex. 2).
- (d) The Nationwide Defendants rebut Plaintiffs' argument, raised for the first time in their opposition brief, that assessing Plaintiffs' liability theory is supposedly "premature."

4. Granting the relief requested by Plaintiffs is within the Court's discretion, would be in the interests of justice, and would not result in prejudice to any party. *See, e.g., Freeman v. Early Warning Servs., LLC*, No. 19-CV-05699, 2020 WL 1151187, at *1 (E.D. Pa. Mar. 9, 2020) (J. Robreno) (granting motion for leave to file reply in support of motion to dismiss); *Collier v. CSX*

Transportation, Inc., No. 2:15-CV-6823, 2016 WL 9185133, at *1 (E.D. Pa. Mar. 23, 2016) (J. Robreno) (same), *aff'd*, 673 F. App'x 192 (3d Cir. 2016).

WHEREFORE, the Nationwide Defendants respectfully request that the Court grant leave to file the Reply.

Respectfully submitted this 4th day of June 2020.

/s/ Pamela A. Carlos

Pamela A. Carlos
Bennett, Bricklin & Saltzburg LLC
Centre Square, West Tower
1500 Market Street, 32nd Floor
Philadelphia, PA 19102
Telephone: (215) 665-3315
Email: carlos@bbs-law.com

Mark L. Hanover (*pro hac vice*)
Kathleen V. Kinsella (*pro hac vice*)
DENTONS US LLP
233 South Wacker Drive
Suite 5900
Chicago, Illinois 60606
Telephone: (312) 876-8000
Email: mark.hanover@dentons.com
kathleen.kinsella@dentons.com

*Attorneys for Defendants Depositors Insurance Company,
Nationwide Property & Casualty Insurance Company,
and Nationwide Mutual Insurance Company*

CERTIFICATE OF SERVICE

I, Pamela A. Carlos, hereby certify that on this 4th day of June 2020, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT** to be electronically filed with the clerk of the court using the CM/ECF system and sent via e-mail to the following attorneys of record:

Jonathan Shub, Esq.
Kevin Laukaitis, Esq.
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103-7225
jshub@koh Swift.com
klaukaitis@koh Swift.com

Edmund A. Normand, Esq. (pro hac vice to be filed)
Jacob L. Phillips, Esq. (pro hac vice to be filed)
NORMAND PLLC
3165 McCrory Place, Suite 175
Orlando, FL 32803
Ed@NormandPLLC.com

Scott Edelsberg, Esq. (pro hac vice to be filed)
EDELBERG LAW, PA
20900 NE 30th Avenue, #417
Aventura, FL 33180
scott@edelsberglaw.com
utanski@edelsberglaw.com

Andrew J. Shamis, Esq. (pro hac vice to be filed)
SHAMIS & GENTILE, P.A.
14 NE 1st Ave., Suite 1205
Miami, FL 33132
efilings@shamisgentile.com

Rachel Dapeer, Esq. (pro hac vice to be filed)
DAPEER LAW, P.A.
300 S. Biscayne Blvd, #2704
Miami, FL 33131
rachel@dapeer.com

/s/ **Pamela A. Carlos**

PAMELA A. CARLOS, ESQUIRE
*An Attorney for Defendants
Depositors Insurance Company,
Nationwide Property & Casualty
Insurance Company, and Nationwide
Mutual Insurance Company*